

## 7A Am. Jur. 2d Automobiles § 62

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### Automobiles and Highway Traffic

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### III. Licensing, Taxation, and Registration

#### A. Vehicles

#### 2. Power to License or Tax

##### b. Federal Limits on State Power

## § 62. Limits imposed by United States Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [23](#), [28](#), [67](#) to [69](#), [73](#)

### A.L.R. Library

[State taxation of motor carriers as affected by commerce clause](#), 17 A.L.R.2d 421

A statute imposing a tax on interstate motor carriers that is fairly apportioned, not discriminatory, and uses a reasonable exercise of legislative judgment, is constitutional under the Privileges and Immunities, Commerce, and Equal Protection Clauses of the United States Constitution.<sup>1</sup> However, a statute providing for a fee or tax on commercial vehicles is invalid under the Commerce Clause where it discriminates against out-of-state vehicles by subjecting them to a much higher charge per mile than in-state vehicles, where it does not purport to fairly approximate the cost or value of the use of the state's roads, where the amount owed does not vary directly with the number of miles traveled or with any other proxy for value obtained from the state, and where highway use taxes could be imposed by other states.<sup>2</sup>

**Practice Tip:**

When a motor carrier challenges a state's formula for apportioning franchise taxes under the Commerce Clause of the Federal Constitution, the burden of proof is not on the state to show that the formula is fair, but rather is upon the taxpayer to show that the formula attributes a disproportionate income to the state or leads to a grossly distorted result.<sup>3</sup>

Under the Due Process Clause of the United States Constitution, proof of the habitual presence of a nonresident's vehicles in the state permits taxation by the state based on the average number of vehicles continuously present in the state.<sup>4</sup>

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Footnotes

- 1 [Morf v. Bingaman](#), 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936); [Bingaman v. Golden Eagle Western Lines](#), 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936); [Hicklin v. Coney](#), 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); [American Trucking Ass'n, Inc. v. Com., Transp. Cabinet](#), 676 S.W.2d 785 (Ky. 1984); [State v. Garford Trucking](#), 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950); [People v. Learnard](#), 305 N.Y. 495, 114 N.E.2d 9 (1953); [Shirks Motor Exp. Corp. v. Messner](#), 375 Pa. 450, 100 A.2d 913 (1953); [Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue](#), 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
- 2 [American Trucking Associations, Inc. v. Scheiner](#), 483 U.S. 266, 107 S. Ct. 2829, 97 L. Ed. 2d 226 (1987); [American Trucking Associations, Inc. v. Secretary of Admin.](#), 415 Mass. 337, 613 N.E.2d 95 (1993).  
An individual may properly bring a claim under 42 U.S.C.A. § 1983 that the Commerce Clause is violated by certain allegedly retaliatory taxes and fees imposed by a state on motor carriers. [Dennis v. Higgins](#), 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991).
- 3 [Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue](#), 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
- 4 [State v. Richard L. Hodges, Inc.](#), 420 A.2d 247 (Me. 1980).

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